

United States District Court
 Western District Pennsylvania.
 Erie Pennsylvania 16501.

DERRICK RANKINE

VS.

C.A.#03-313 Erie

Superintendent Sabina et al.

Plaintiff's Response to Defendant's Motion to Dismiss.

a) Three Strikes Rubbish.

Defendants claimed that Plaintiff have used up three strikes is rubbish, since Plaintiff's three Complaints in the United States District Court For Eastern Pennsylvania, were dismissed pursuant to Heck v Humphrey 512 U.S. 477, 487, 114 S.Ct. 2364, 2372-2373, 129 L.Ed.2d 383 (1994), because Judge Rayford Means, remanded the Plaintiff into custody on April 4, 2001, under the guise that Plaintiff was incompetent to stand, in retaliation because the Plaintiff objected to the imposition of Mr. Keith Dews on the Plaintiff, without a competency hearing in open court and on the record, and without even being in the Courtroom. Appel v Horn 250 F.3d 203, 209-218 (CA-3, 2001).

The Plaintiff was also denied a waiver of counsel hearing, even though Plaintiff filed a timely waiver of counsel motion, Farett v California 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975) and waived the right to counsel by conduct, United States v Thomas 220 F.Supp.2d 430 at 438-442 (Plaintiff fired 6 lawyers before trial), yet Plaintiff was denied the timely and repeatedly

(2) requested right to SELF-representation, *Faretha V California*
in *supra*.
Plaintiff was also denied a hearing on Plaintiff's timely
Filed a) Motion For A Writ of Habeas Corpus, b) Motion
to dismissed For EXCESSIVE and prejudicial delay be
TWEEN August 13 1999 and March 23 2000 and BETWEEN
March 23 2000 and the present time and c) Motion to
dismissed For violating Plaintiff's Speedy trial rights
SEE Pa. R. Crim. Pro. Rule 110(c), Fed. R. Crim. Pro. Rule 48(b),
Com V Palmer 558 P.2d 882 at 885 (Pa Super 1984) ONCE
AN ACCUSED HAVE Filed an omnibus pre-trial motion,
the ACCUSED may not be tried until those motions are
disposed of by the Courts. Com V Riffert 379 Pa Super
1 at 10, 549 A2d 566 at 570-571 (1988); and appointed
counsel may not WAIVED issues raised by client. *Faretha*
V California 422 U.S. at 816, 95 S.Ct 2530-2531.
At trial, the Plaintiff, was again denied the right to
SELF-representation, under the guise that the Plai
ntiff was competent to stand trial but incompetent
For SELF-representation, again without a competen
cy hearing or a waiver of counsel hearing. SEE
Godinez V Moran 509 U.S. 389, 396-401 113 S.Ct 2680
2686-2688, 125 L.Ed.2d 321.
Plaintiff was again denied a hearing on a timely Filed
pre-trial motions, and trial counsel impeached the
Plaintiff's alibi defence in opening argument, then
trial counsel impeach himself in closing argument,
then trial counsel admitted that the Plaintiff did told
trial counsel of the Plaintiff's alibi witnesses.

3 So contrary to the defendants claim the Plaintiff's complaints were dismissed, due to the criminal conduct of Mr. Keith Dews, Judge Ray Ford Means and the District Attorney of Philadelphia, and each one was classified as Heck v Humphrey violations. Plaintiff was told by Judge James Giles that when the Plaintiff's criminal convictions are overturned, the Plaintiff was to refile all three complaints. Plaintiff was convicted using false D.N.A. evidence as Plaintiff exhibits P.1 and P.2 shows. Brady v Maryland 373 U.S. 83 87-90, 83 S.Ct. 1194, 1195-1196, 10 L.Ed.2d 215 (1963). So the defendants claims are patently false and there should be denied.

Contrary to the defendants claims again, the Plaintiff was assaulted by defendants Munion, Pitts and Chapley and terrorized night and day while at BCT-Somerset. On 05/25/05, defendant Chapley paid inmate Dwayne Hill to throw urine in the Plaintiff's face. On 07/27/05, Cio Knupsky paid inmates David Dunbar and Jamel Buckingham to spit on the Plaintiff. Between May 4, 2005, prison officials here have spotted the Plaintiff's medication ten (10) times and a cold blooded attempted to murder the Plaintiff, in retaliation for pursuing this action, C.A.# 03-105 Erie and C.A.# 04-100 Erie. On 10/14/05, Cio Kowall came into Plaintiff's cell and removed Plaintiff's medications, which caused the Plaintiff to vomit blood and have severe chest pains from 10/14/05 to

4. to 10/18/05; Plaintiff's medications were returned on 10/18/05. Between 08/27/05 to 09/27/05, Plaintiff was deliberately and maliciously taken of Plaintiff medications, by Mr. Chris Meyers and Mr. Tretinik in another attempt to murder the Plaintiff and made it look like an accident, in retaliation for pursuing this action. So, Plaintiff was in imminent danger when this action was initiated and Plaintiff is in serious danger and imminent danger at this time from prison officials. Abdul-Akbar 293 F.3d at 313 Therefore this claim must fail.

(b). Defendants next argued that the Plaintiff failed to adequately serve the defendants. This argument is rubbish. While at SCI-Somerset, the Plaintiff attempted to serve each named defendant personally. All of the defendants refused service, except defendants Munion, Pritts and Chapley. Defendants Pritts, Munion and Chapley took their copies of the Complaint and spitted on it then tore them up. Plaintiff then mailed a copy of the Complaint to Secretary Jeffery Bread and a copy to the Office of the Attorney General, whom is counsel of record for the defendants. Fed R. Civ. Pro. Rule 41. So, the defendants were served in a timely manner.

Defendant, the medical department still refused to accept service of the Complaint even at this time and the medical department refused to respond to all fifteen (15) of Plaintiff's requests for the name and address of the medical department counsel.

(5) Fed R Civ. Pro. Rule 4 (defendants may not refuse service of a complaint, then cry that defendants were not served).

(2) When, the Plaintiff contacted the United States Marshall to request that the Summons be served on all defendants, Plaintiff was informed by the United States Marshall, that no order was issued by the Courts, therefore the Summons could not be served. So, the failure to serve the defendants in a timely manner, if that had occurred would be due to the defendants' terroristic behavior and hoodliganism towards the Plaintiff. Fed R Civ. Pro. Rule 4. Therefore, this claim must fail.

(C) Defendants next argued that Plaintiff's complaint is not understandable and so violates Fed R Civ. Pro. Rule 8. This argument is rubbish. First, the defendants took ~~two~~ (2) years to cry that defendants cannot understand Plaintiff's complaint, which is belied by the defendants' First motion to dismiss. In the defendants' First motion to dismiss, the defendants argued that prison officials can steal Plaintiff's property and, Plaintiff must not and cannot obtain legal redress for these property; that the defendants have a right to deny Plaintiff access to the courts without being liable; that defendants have a right to assault and humiliate and torture and terrorized the Plaintiff without being liable, so this argument again is rubbish. Fed R Civ. Pro. Rule 8. *Alston v Parker*

(6) 363 F.3d 229, 231-234 (3rd Cir 2004). Alston V Parker made it clear that EVEN IF this Argument WAS true the Court should Appoint Counsel For the Plaintiff INSTEAD OF dismissing Plaintiff's Complaint Fed R Civ. Pro. Rule 8. THEREFORE, the DEFENDANTS motion to dismissed should be DENIED, and the CASE listed For trial on A date certain.

Respectfully Submitted
Derrick Rankine

EU 5850

SCI-FAYETTE

P.O. Box 9999

LABELLE PA 15450

10/18/05.

Enclosed ARE Plaintiff's Exhibits P.1 and P.2

P.A. lies B.1 B.2 and B.3; please File

SEE Com. V Stansbury 640 A2d 1368, 1370

Com. V Majorania 445 A2d 529 at 532 (Footnote 8). this will prove to you that this Plaintiff WAS knowingly, intention ally and deliberately railroaded into prison by Judge Rayford MEANS, Mr. Keith DEWS, Mr. Albert Raman, Mr. Donald Chisholm II and Mr. Alston B. MEADE to be murdered and this is why the SE DEFENDANTS attempted to murdered this Plaintiff. This D.N.A EVIDENCE is FALSE. Derrick Rankine

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PROOF OF SERVICE and Verification.

Plaintiff, DERRICK RANKINE, SWEARS under oath and the penalty of perjury pursuant to 28 USC C.A. § 1746 that all statements made in the within motion are true and correct and that a copy of the within motion and exhibits P.1 P.2 D. A lies B.1 B.2 and B.3, ARE BEEN GIVEN to prison officials to mail to Mr. Kemal Mericli, OFFICE OF ATTORNEY GENERAL, 6th Floor, Manor Complex, 564 Forbes Avenue, Pittsburgh PA 15219.

Respectfully Submitted
Derrick Rankine

EU 5850

SCI-FAGETTE

P.O. Box 9999

LaBelle PA 15450

10/18/05.